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April 30, 1999

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VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20054

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: Petition of the California Public Utilities Commission and of the People of the
State of California for Delegation of Additional Authority
Filed in NSD File No. L-97-42; CC Docket No. 96-98
Written *Ex Parte* Presentation

Dear Ms. Salas:

On behalf of our client Vanguard Cellular Systems, Inc. ("Vanguard"), I hereby submit the attached comments for incorporation as a written *ex parte* filing into the above-referenced proceeding.

The comments are being filed on this date in the Commission's proceeding on the Maine Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures, NSD File No. L-99-27 (filed March 17, 1999). The comments oppose grant of Maine's petition. As indicated in the comments, Vanguard opposes California's petition for delegation of additional authority on the same grounds as it opposes the Maine petition.

Pursuant to Section 1.1206(b)(1) of the Commission's Rules, an original and two copies of this letter are being submitted to the Secretary's office on this date. Please inform me if any questions should arise in connection with this filing.

Respectfully submitted,



J.G. Harrington

JGH/lsr

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)
)
Petitions for Declaratory Ruling and) NSD File No. L-99-27
Request for Expedited Action on the)
July 15, 1997 Order of the Pennsylvania)
Public Utility Commission Regarding)
Area Codes 412, 610, 215, and 717)
)

To: The Commission

COMMENTS OF VANGUARD CELLULAR SYSTEMS, INC.

Vanguard Cellular Systems, Inc. ("Vanguard"), by its attorneys, hereby submits its comments in opposition to the petition for additional delegated authority to implement number conservation measures filed by the Maine Public Utilities Commission ("MPUC") in the above-referenced matter.^{1/}

^{1/} Maine Public Utilities Commission's Petition for Additional Delegated Authority to Implement Number Conservation Measures, NSD File No. L-99-27 (filed March 17, 1999) ("*Petition*"). For the reasons described herein, Vanguard also opposes the Petition for Waiver of the Massachusetts Department of Telecommunications and Energy to Implement Technology-Specific Overlay, the Petition of Massachusetts Department of Telecommunications and Energy for Additional Authority to Implement Various Area Code Conservation Measures, the Petition of the New York Department of Public Service for Additional Authority to Implement Number Conservation Measures, the Florida Public Service Commission Petition for Expedited Decision for Grant of Authority to Implement Number Conservation Measures, the Petition of the California Public Utilities Commission and the People of the State of California for Delegation of Additional Authority, and the Petition of the California Public Utilities Commission and the People of the State of California for Waiver to Implement a Technology-Specific or Service-Specific Overlay. Copies of these comments are being submitted as written *ex parte* filings in the dockets for those proceedings.

Vanguard opposes the MPUC request for additional authority to implement various number conservation measures, including interim number pooling and thousand-block pooling, because there is no evidence that such authority is warranted. Indeed, Maine has failed to make the kind of showing contemplated by the Federal Communications Commission's ("Commission") *Pennsylvania Order*, which allows states to seek permission to engage in specific experiments with number conservation techniques.^{2/} Rather, the MPUC seeks blanket permission to, in essence, try anything it wishes. In effect, the Petition is merely a late-filed petition for reconsideration of the *Pennsylvania Order* and should be rejected.

I. THE MAINE PETITION SEEKS RECONSIDERATION OF THE PENNSYLVANIA ORDER AND SHOULD BE DISMISSED

The number conservation policies adopted in the *Pennsylvania Order* are essential to ensure that necessary area code relief occurs. More important, a consistent nationwide plan is necessary to deal with the pervasive exhaust problems around the country. Haphazard or inconsistent state efforts to address numbering exhaust could jeopardize the North American Numbering Plan ("NANP") or derail ongoing efforts to implement numbering optimization measures.

It is plain from the *Pennsylvania Order* that the Commission envisioned a specific process for states wishing additional delegated authority over number conservation efforts. As part of that process, states can submit proposals for number conservation initiatives to the NANC

^{2/} Petition for Declaratory Ruling and Request for Expedited Action on the July 15, 1997 Order of the Pennsylvania Public Utility Commission Regarding Area Codes 412, 610, 215, and 717, *Memorandum Opinion and Order and Order on Reconsideration*, CC Docket No. 96-98, NSD File No. L-97-42 (rel. Sept. 28, 1998) ("*Pennsylvania Order*").

for approval, and then to the Commission for its review.³ Indeed, the *Pennsylvania Order* invited the states — those wishing additional delegated authority — to present to the Commission and NANC *limited* and *focused* experiments outside of the area code relief process similar to the pooling initiative submitted by the Illinois Commerce Commission (“ICC”). The ICC presented the Commission with a detailed proposal for its limited number pooling experiment, including the specific steps the ICC had taken to ensure that the experimental pooling trial would not impede the Commission’s NPA relief guidelines or its efforts to initiate national number pooling standards. Similarly, the ICC had successfully demonstrated to the Commission that it had taken several precautions to ensure that the pooling trial would be conducted in a nondiscriminatory manner.

The MPUC, unlike the ICC, presents no such information. Rather the MPUC flatly requests that the Commission ignore the number conservation policies adopted in the *Pennsylvania Order*, and grant the MPUC unfettered discretion to establish number assignment and utilization standards, as well as currently prohibited “number conservation” measures. Surprisingly, the *Petition* provides *no evidence* that the authority requested will help to resolve the alleged numbering problems in Maine, or that it will provide all carriers sufficient nondiscriminatory access to numbering resources. Instead, the MPUC merely “*believes* that it *may* be able to avoid imposing [the] . . . costs [of implementing a new area code] through a combination of number conservation measures and existing pooling and porting technology,

³/ See *Pennsylvania Order* at ¶ 31.

without negatively impacting the development of competition in Maine.”⁴ Such unsupported blanket statements are insufficient to warrant the broad authority requested. Indeed, the Commission has explained to the states how they should present requests for authority to implement pooling measures: “state commissions that are seeking number pooling trials that fall outside of the [*Pennsylvania Order*] guidelines . . . should submit such *plans* to the Common Carrier Bureau.”⁵ Like the pending New York, Massachusetts, Florida and California petitions for additional delegated authority, Maine did not submit any plan, proposals or experiments for its number conservation initiatives, nor is there any indication that Maine (or New York, Massachusetts, Florida or California) submitted a request to the NANC.⁶

Loosening the strictures of the *Pennsylvania Order* would allow Maine to implement its own number conservation regime and avoid implementing area code relief altogether. Based on its request, it is evident that Maine, like the other state petitioners, has misunderstood the *Pennsylvania Order*. Maine seeks to avoid area code relief by implementing its proposed conservation measures. The Commission did not intend for states to submit number

⁴/ *Petition* at 2-3 (emphasis added).

⁵/ *Pennsylvania Order* at ¶ 32 (emphasis added).

⁶/ California admits that it does not know whether the relief requested will assist in its current numbering situation or even whether it will choose to adopt any specific measure if authority is granted: “We emphasize that we do not wish to prejudge the issues of whether California should implement a technology-specific or service-specific area code. The CPUC may ultimately decide that implementing such an area code is technically infeasible or simply will not contribute significantly to easing pressure on the numbering system.” *Petition of the California Public Utilities Commission and the People of the State of California for Waiver to Implement a Technology-Specific or Service-Specific Overlay* at 7. While California’s candor is admirable, this statement demonstrates precisely why the California petition cannot be granted.

conservation plans (let alone vague, non-specific petitions like those before the Commission) in place of necessary area code relief. Rather, the Commission sought number conservation proposals that would be implemented independent from their area code relief measures.

Thus, the Commission must act to prevent the State of Maine, and any other jurisdiction, from avoiding area code relief and thus preventing carriers from obtaining the NXX codes they need. As Vanguard has stated repeatedly, access to numbering resources is essential to a competitive telecommunications marketplace, and without numbers it is impossible for CMRS providers and local exchange carriers to serve their customers.^{7/} The Commission must ensure that all telecommunications carriers have nondiscriminatory access to essential numbering resources and deny unsupported requests for expanded state authority over number administration and conservation efforts.

II. THE MAINE PETITION SEEKS AUTHORITY TO IMPLEMENT DISCRIMINATORY NUMBER CONSERVATION MEASURES

Through the *Pennsylvania Order*, the Commission has sought to ensure that all providers have equal access to the numbering resources they need, and to prevent states from discriminating against certain providers through numbering administration. The MPUC requests authority to order the implementation of thousand block pooling and interim unassigned number porting.

^{7/} See Reply Comments of Vanguard Cellular Systems, Inc. at 3; Comments of Vanguard Cellular Systems, Inc. at 2 ("Vanguard Comments"); Comments of Vanguard Cellular Systems, Inc., filed in Commission Request for Comment on NSD North American Numbering Council Report Concerning Telephone Number Pooling and Other Optimization Measures, File No. L-98-134, at 5-6 (filed on Dec. 21, 1998) ("NANC Comments").

As the Commission has recognized, however, wireless providers cannot today implement number portability or use number pooling because of technological limitations.^{8/} The MPUC's unsupported request for authority to order interim number porting and thousand block pooling, without a provision to ensure that non-pooling carriers can obtain numbers as easily as carriers that participate in the pooling process, is unlawfully discriminatory against wireless providers — the most efficient users of numbering resources in the telecommunications industry.

As Vanguard has shown in other proceedings, it is not enough for a state to set aside some blocks of numbers for non-pooling carriers. There must be specific provisions to monitor the availability of numbers to non-pooling carriers and to ensure that timely area code relief occurs before those numbers run out.^{9/} If these safeguards are not implemented, then non-pooling carriers will be disadvantaged in the telecommunications marketplace and, in fact, may be unable to continue in business. Such a result would be contrary to the Commission's basic statutory mandate and to the injunction of the preamble of the 1996 Act, which requires the Commission to promote competition for the benefit of consumers.^{10/} Because the MPUC has failed to make any provision for non-pooling carriers, its request for additional authority should be rejected.

^{8/} *Pennsylvania Order* at ¶ 40.

^{9/} *See* NANC Comments at 3.

^{10/} Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56, Preamble, (1996).

III. CONCLUSION

For all these reasons, Vanguard Cellular Systems, Inc. respectfully requests that the Commission act in accordance with these comments.

Respectfully submitted,

VANGUARD CELLULAR SYSTEMS, INC.

By: 

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Its Attorneys

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April 30, 1999

CERTIFICATE OF SERVICE

I, Jeanette M. Corley, a secretary at Dow Lohnes & Albertson, PLLC, do hereby certify that on this 30th day of April, 1999, I caused copies of the foregoing "**Comments of Vanguard Cellular Systems, Inc.**" to be served upon the parties listed below via hand delivery or first class mail:

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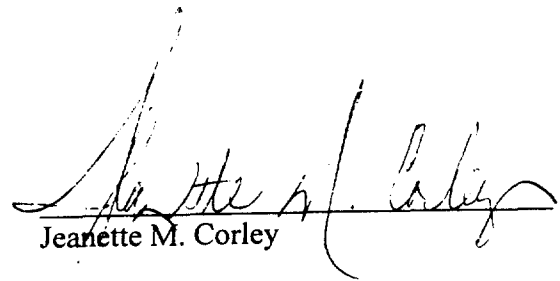
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